

III. THE PHASE II ISSUE

508. The record evidence establishes that Mr. Parker has repeatedly engaged in misrepresentation and/or lack of candor. He has engaged in this misconduct in connection with a number of stations, including Station WTVE(TV), which he has effectively controlled since October, 1991. As a result, both he and RBI must be found disqualified to remain licensees, and the application for renewal of license of Station WTVE(TV) must be denied.

A. APPLICABLE STANDARD

509. One of the most basic and most longstanding tenets of the Commission's regulatory process is that all applicants, permittees and licensees are expected to exercise the utmost candor and honesty in their dealings with the Commission. *E.g.*, *Fox River Broadcasting, Inc.*, 93 FCC 2d 127 (1983). Broadcasters are held to "high standards of punctilio" and must be "scrupulous in providing complete and meaningful information" to the Commission. *E.g.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824, 830 (D.C. Cir. 1965). Absolute candor is perhaps the foremost prerequisite for Commission licenseeship. *E.g.*, *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126 (Rev. Bd. 1987), *aff'd in pertinent part*, 4 FCC Rcd 2553 (1989), *recon. denied*, 4 FCC Rcd 6312 (1989); *Mid-Ohio Communications*, 104 FCC 2d 572 (Rev. Bd. 1986), *rev. denied*, 5 FCC Rcd 940 (1990), *recon. dismissed in part, denied in part*, 5 FCC Rcd 4596 (1990).

510. The duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their applications. *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *RKO General, Inc. v. FCC*,

670 F.2d 215, 229 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982).

This is because the Commission, with a limited staff and limited resources, relies heavily on the honesty and probity of its licensees in a regulatory system which is largely self-policing. *See Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980) ("[E]ffective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees . . .").

511. While "misrepresentation" and "lack of candor" may differ in certain limited respects, the gravamen of both is an intent to mislead the Commission, whether through affirmatively false statements or through evasion and failure to be fully honest and forthcoming. *See, e.g., Fox River, supra*. Where a party is found to have intentionally misled the Commission -- whether through misrepresentation or lack of candor, and even with respect to seemingly insignificant matters -- that party is not qualified to be a Commission regulatee. *E.g., Policy Regarding Character Qualifications in Broadcast Licensing, supra*; *FCC v. WOKO*, 329 U.S. 223 (1946); *Center for the Study and Application of Black Economic Development*, 10 FCC Rcd 2836, 2837, ¶6 (Rev. Bd. 1995). The necessary intent to mislead or deceive may be found through an evaluation of relevant facts and circumstances. *See, e.g., David Ortiz Radio Corp. v. FCC*, 941 F.2d at 1260 (D.C. Cir. 1991) (intent to deceive can be found in "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity").

512. It is well recognized the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency. *E.g., Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000), *quoted in Contemporary Media*,

Inc. v. FCC, 214 F.3d 187 (D.C. Cir. 2000); see also *FCC v. WOKO, Inc.*, 329 U.S. at 225-27.

B. THE RECORD ESTABLISHES THAT MR. PARKER ENGAGED IN A PATTERN OF REPEATED MISREPRESENTATION AND/OR LACK OF CANDOR WHICH CONTINUES TODAY.

513. No doubt can exist that Mr. Parker repeatedly engaged in misrepresentation and/or lack of candor in his "disclosures" to the Commission concerning the *Mt. Baker* and *San Bernardino* proceedings.

514. Mr. Parker was found not once, but twice, to have engaged in "deceit" or "fraud" before the Commission. That is in and of itself sufficient to establish his proclivity *not* to deal truthfully with the Commission. As recently as 1997 the full Commission, apprised of Mr. Parker's relationship to both the *Mt. Baker Proceeding* and the *San Bernardino Proceeding*, stated unequivocally that "[s]erious character questions also remain" regarding Mr. Parker. *Two If By Sea Broadcasting Corporation*, 12 FCC Rcd 2254 (1997). Those questions have not been addressed, much less resolved, since that decision. Accordingly, they have not gone away, and they must be considered here. ^{90/}

^{90/} Adams brought the Commission's decision in *Two If By Sea Broadcasting Corporation* to the Presiding Judge's attention in a motion to enlarge issues filed on July 15, 1999. The Presiding Judge denied that motion because, *inter alia*, he believed that Mr. Parker's previously adjudicated misconduct could be ignored because it had occurred more than 10 years earlier. See *Memorandum Opinion and Order*, FCC 99M-49, released September 3, 1999, *request for appeal granted in part and denied in part*, FCC 99M-61, released October 15, 1999. For reasons stated in, *inter alia*, its Request for Leave to Appeal filed on September 13, 1999, Adams believes that that rationale is inconsistent with the policies outlined in, *e.g.*, *Character Qualifications*, 102 FCC2d 1179, 1229 (1986), *Crystal Communications, Inc.*, 12 FCC Rcd 2149, 2150 (1997) and *RKO General, Inc.*, 5 FCC Rcd 642, 644 (1990). The Presiding Judge can and should consider

(continued...)

515. But even if Mr. Parker's previously-adjudicated misconduct is deemed beyond the reach of this proceeding, the same is not true of Mr. Parker's unmistakable pattern, throughout his various submissions to the Commission and the Presiding Judge, of repeated omissions and mischaracterizations of his misconduct.

516. The pattern started with the KWBB(TV) and Los Angeles LPTV Applications, which contained no reference at all to the San Bernardino Proceeding and only a benign gloss on the *Mt. Baker Proceeding*. How did this particular "disclosure" come about? Mr. Parker was unable to recall, other than to suggest that (a) Mr. Wadlow drafted it and (b) Mr. Parker relied on Mr. Wadlow. But -- Mr. Wadlow denied drafting it.

517. Then there were the WHRC(TV), WTVE(TV), KVMD(TV) and KCBI Applications. Each included essentially the same benign gloss on *Mt. Baker* as appeared in the earlier applications. But each also included a cunningly-crafted description of the *San Bernardino Proceeding* which carefully suggested that no basic character issues had been involved there. How did that particular disclosure come about? Again, Mr. Parker could not recall exactly who drafted it. Nor could he offer any credible explanation as to how the *San Bernardino* description could be squared with the facts of, *inter alia*, the *San Bernardino Review Board Decision*.

518. Mr. Parker knew about *Mt. Baker* and *San Bernardino*. He also knew from Ms. Shaw's situation, at least, that disclosure of potentially disqualifying real-party-in-interest misconduct could likely prevent him from getting his applications granted by the

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the impact of Mr. Parker's previously-adjudicated misconduct on his qualifications to remain a licensee.

Bureau. He therefore had a clear motive to try to throw the Commission's staff off the track by mischaracterizing the record of his misconduct.

519. His gambit seemed to work until October, 1992, when a Commission staffmember requested additional information about, *inter alia*, the *San Bernardino Proceeding*. This development presented Mr. Parker with the opportunity to establish, unequivocally, any good faith intention he might have had to be candid and forthcoming before the Commission. If Mr. Parker truly believed that his qualifications had been upheld in the *San Bernardino Proceeding*, he could and should have set forth that belief in the Dallas Amendment with a full explanation. ^{91/}

520. But Mr. Parker elected **NOT** to proceed in that candid manner. To the contrary, he elected to file a blatantly inaccurate and misleading amendment.

521. Mr. Parker's presentations in his own defense in this proceeding further confirmed his unreliability. The incredibility of his efforts to redirect the blame for his misconduct in the *San Bernardino Proceeding* was surpassed only by the brazenness of those efforts. His attempts to blame his counsel were belied repeatedly by contrary evidence, including the testimony of the very lawyers on whom he claimed to have relied. The testimony of Mr. Kravetz indicates that Mr. Parker was unable or unwilling to be truthful and candid even with his own counsel.

522. The only arguable documentary support for those claims, the Wadlow Letter, was demonstrably wrong and obviously unreliable. Mr. Parker's and Mr. Wadlow's

^{91/} Mr. Kravetz testified that, had Mr. Kravetz known about the *San Bernardino Proceeding*, that is what he would have recommended.

involvement in the Shaw situation which developed just one week after the Wadlow Letter plainly eliminated any reliability the Wadlow Letter may arguably have ever had. Not surprisingly, neither Mr. Parker nor Mr. Wadlow seemed willing or able to recall much about the Shaw situation.

523. The totality of the evidence about Mr. Parker's "disclosures" proves beyond any doubt that Mr. Parker engaged in serious, repeated, intentional misrepresentation and lack of candor before the Commission.

524. The evidence also establishes that the pattern of misconduct seen in Mr. Parker's actions in 1988-1992 has continued and continues to this day.

525. In October, 1991, Mr. Parker issued stock to himself and others which resulted in an unauthorized transfer of control of RBI. *See, e.g.*, Paragraphs 225-236, above. That stock issuance amounted to an unauthorized take-over of RBI by Mr. Parker which featured at least two highly-charged shareholder meetings at which RBI directors, nominated by Mr. Parker, were elected. Despite the easily memorable nature of those incidents, Mr. Parker failed to notify the Commission of RBI's newly-elected directors or officers for a period of almost three years, despite the continual regulatory requirement to do so and repeated opportunities to do so. *See, e.g.*, Paragraphs 237-245, above.

526. In 1998 RBI failed to timely report the option provision in the Telemundo affiliation agreement, despite the fact that such reporting was clearly required by the Commission's rules and RBI was aware of that requirement. *See Paragraphs 214-217*, above. Moreover, the excuse offered by Mr. McCracken for that failure was plainly bogus. *See Adams Exh. 88.*

527. In 1999, RBI failed to report its October 15, 1999 termination of the Telemundo affiliation agreement, barely a month after RBI had fervently argued to the Presiding Judge that RBI's broadcast of Spanish-language programming should be of decisional importance here. *See, e.g.*, RBI's September 7, 1999 Reply to the Bureau's Opposition to RBI's motion for addition of a specialized programming issue, at 10. The Presiding Judge rejected RBI's argument in a *Memorandum Opinion and Order*, FCC 99M-52, released September 20, 1999. And three weeks later, without bothering to tell the Presiding Judge, RBI abandoned the Spanish-language programming it had theretofore urged as a factor of potentially decisional importance here.

528. In 1999 and again before the Presiding Judge, RBI and Mr. Parker offered misleading descriptions of the basis for RBI's rosily optimistic assessment of its ability to build a tower at the Earl Township site. *See* Paragraphs 18-22, above. In the same vein, after Mr. Parker testified in January, 2000, about his optimism concerning the outcome of RBI's litigation against Earl Township, RBI failed to report that that litigation was resolved unfavorably to RBI just two weeks later. *See* Paragraph 22, above. And after the Presiding Judge reminded Mr. Parker of his obligation to report "[i]f something significant happens, even if it's partially significant", Tr. 1907, Mr. Parker has again failed to report that the mediation of the Earl Township litigation has been terminated.

529. Finally, and most importantly, as chronicled time and again above, throughout this proceeding Mr. Parker has offered wholly incredible explanations in defense of his misrepresentative and non-candid "disclosures" to the Commission.

530. In evaluating an applicant's basic qualifications to become or remain a

licensee, the Commission searches for evidence of "the proclivity of an applicant to deal truthfully with the Commission and to comply with [its] rules and policies", *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC2d 1179, 1190-1191 (1986), and also evidence that the applicant "lacks the traits of reliability and/or truthfulness necessary to be a licensee." *Id.*

531. The record compiled in this proceeding abundantly demonstrates that Mr. Parker does **NOT** have a proclivity to deal truthfully with the Commission or to comply with its rules and policies. The record compiled in this proceeding abundantly demonstrates that Mr. Parker **DOES** in fact **LACK** the traits of reliability and truthfulness necessary to be a licensee.

532. Accordingly, the Phase II Issue must be resolved adversely to RBI, and it is determined that RBI and its dominant principal, Micheal Parker, are not qualified to be licensees and the application of RBI for renewal of the license of Station WTVE(TV) must be denied.

IV. THE STANDARD COMPARATIVE RENEWAL ISSUE

533. Even if RBI were to be found basically qualified to remain a licensee, the record evidence establishes that RBI is comparatively inferior to Adams and that Adams must therefore prevail under the Standard Comparative Renewal Issue.

A. DIVERSIFICATION OF MEDIA OWNERSHIP

534. Adams has no other attributable media interests. *See* Paragraph 13. By contrast, RBI is charged with Mr. Parker's controlling interests in Station KVMD(TV) and KAIJ, formerly KCBI. *See* Paragraph 15, above. Further, Mr. Parker effectively controls, through a local marketing agreement, Station WHCT(TV). *Id.* Adams is therefore entitled to a clear comparative preference under the diversification component of the standard comparative issue. *E.g., Cowles Broadcasting, Inc.*, 86 FCC2d 993, 49 R.R.2d 1138, 1153 (1981).

535. Historically the Commission has declined to ascribe significant weight to the diversification aspect of the comparative analysis in comparative renewal proceedings. *See, e.g., Cowles Broadcasting, Inc.*, 86 FCC2d 993, 1015 (1981). The rationale for that "hands-off" approach has been a concern that the comparative renewal process not lead to a haphazard restructuring of the broadcast industry because challengers could easily structure their proposals to be superior to the incumbent's. *E.g., Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982). Accordingly, diversification of media ownership has been accorded minimal weight as against an incumbent renewal applicant's claim of "renewal expectancy".

536. But in approving that "renewal expectancy" rationale in the *Cowles/Central*

Florida decision, the Court of Appeals announced an "important caveat":

If in a given case, . . . , the factual situation is such that the denial of a license renewal would not undermine renewal expectancy in a way harmful to the public interest, then renewal expectancy should not be invoked. ^{40/}

^{40/} Thus, the three justifications given by the Commission for renewal expectancy, . . . , should be remembered by the FCC in future renewal proceedings and, where these justifications are in a particular case attenuated, the Commission ought not to chant "renewal expectancy" and grant the license.

Central Florida, 683 F.2d at 510. With the statutory elimination of the comparative renewal process in 1996, this case is in all probability the last comparative broadcast renewal case. There can therefore be no legitimate concern that the comparative renewal process will ever lead to the "haphazard restructuring of the broadcast industry". That being the case, the Commission's historical justification for assigning virtually no weight to the diversification component of the comparative analysis is no longer valid.

537. This case thus presents the situation presaged in the *Central Florida* caveat. Through the elimination of the comparative renewal process, the justification for discounting the impact of the diversification component has vanished, and the Commission can no longer ignore decisionally significant differences under that component.

538. In this case the diversification differences are clearly significant: Adams has no other attributable media interests, RBI is charged with all of Mr. Parker's interests, including ownership of a television and an international broadcast station and control of another television station. Adams is therefore entitled to a clear preference under the diversification element of the comparative analysis.

B. EFFICIENT USE OF FREQUENCY

539. The evidence establishes that Adams's technical proposal would provide service to an area approximately 800 square kilometers greater than RBI's currently licensed facilities, and to a population of approximately 1,150,000 more persons. However, none of the areas or populations involved are unserved or underserved, and the comparative coverage analysis is not of decisional significance to this proceeding.

540. The same would be true if RBI's proposed facilities, specified in a long-outstanding construction permit, were to be realized. However, those as-yet-unconstructed-after-ten-years facilities cannot in any event be considered here because RBI has failed to demonstrate that those facilities will ever be implemented. The mere fact that RBI has held the underlying construction permit for a decade without constructing it undermines any claim that those facilities will ever be built. Moreover, the stated reason for RBI's failure to build, *i.e.*, the refusal of Earl Township to permit the construction, has not ended. To the contrary, that refusal was reaffirmed in local litigation as recently as January, 2000. Under these circumstances, even if the RBI construction permit would result in some comparative preference -- which it would not -- the permit cannot be credited here.

C. LOCAL RESIDENCE, CIVIC INVOLVEMENT AND BROADCAST EXPERIENCE TO THE EXTENT THAT THEY REFLECT ON THE INCUMBENT RENEWAL APPLICANT'S HISTORICAL PERFORMANCE.

541. As discussed above at Paragraphs 10-11, mere local residence, civic involvement or broadcast experience are not in and of themselves relevant here. Rather, those factors would be relevant only to the extent that they demonstrate that local residence,

civic involvement and/or broadcast experience actually had some historical impact, positive or negative, on particular programming performance during the license term.

542. Adams claims no local residence, civic involvement or broadcast experience in the proposed service area, although the unquestionable record of professional achievement of Adams's directors is matched by their demonstrated dedication to and active and long-term involvement in a wide range of civic and charitable activities. Nevertheless, Adams's shareholders are all individuals of substantial personal and professional accomplishment. Unlike Mr. Parker, none of Adams's shareholders has ever been shown to have engaged in fraud before the Commission even once, much less twice.

543. RBI's shareholders claim substantial local residence in its service area as well as some civic involvement there. Two of RBI's shareholders during the license term, Messrs. Parker and Linton, claimed some broadcast experience.

544. These factors, however, weigh heavily *against* RBI in the comparative analysis. The record demonstrates that virtually *NONE* of RBI's local residence, civic involvement or broadcast experience resulted in *ANY* locally-produced, locally-oriented programs during the license term. In fact, the only locally-resident shareholder who appears to have attempted to make any serious contribution to the station's local programming was Dr. Tietbohl, who in February, 1994, questioned the station's failure to provide any coverage at all of the January, 1994 earthquake, the strongest in Reading's history. The record demonstrates that Dr. Tietbohl's expressions of concerns had no appreciable impact on the station's programming.

545. In *Bechtel II*, the Court of Appeals rejected the Commission's "integration"

analysis, which relied on the "predictability" of future performance based on such factors as local residence, civic involvement and broadcast experience. RBI has argued that such factors may properly be considered here because they are "verifiable, non-predictive factors" which promote awareness of community needs and, therefore, programming responsive to such needs. *See* RBI's Prehearing Brief on Scope of Issues, filed July 22, 1999.

546. True enough. But RBI appears to have been assuming that the local residence, civic involvement and broadcast experience factors could be shown to have in fact had some beneficial impact on the programming of Station WTVE(TV). What the record shows, however, is that RBI's local residence, civic involvement and broadcast experience had *NO* impact at all on the station's programming during the license term.

547. In other words, despite some presumed awareness of local needs and interests through the local residence and civic activities of some of its shareholders, RBI has failed entirely to bring that awareness to bear in the station's programming. That being the case, RBI cannot claim any comparative advantage here. Rather, RBI should logically be deemed to suffer a significant comparative demerit because of its failure to serve the public. Having touted its local residence and civic activities, RBI can and should be held accountable for the fact that those factors have not influenced the station's programming. RBI had ample opportunity, over a full five-year license term, to allow the local presence of its shareholders to direct the station's programming to the community's needs and interests. RBI spurned that opportunity. This unfortunate track record must be considered in the final analysis of RBI's comparative claims.

D. RENEWAL EXPECTANCY

548. A renewal expectancy may be awarded to an incumbent renewal applicant if the incumbent is shown to have met the needs and interests of the station's service area. Where the incumbent's programming paid unusually high attention to community needs and interests, the past record will be considered "superior", enhancing the weight of the renewal expectancy. *E.g., Formulation of Policies and Rules Relating to Broadcast Renewal Applicants*, 3 FCC Rcd 5179, 5185 (1988). But if the level of performance is found to be "minimal", no renewal expectancy is awarded to the incumbent. *Id.*

549. The initial focus of the renewal expectancy analysis is the incumbent licensee's programming performance. The Commission considers: (a) the quantity of nonentertainment programs broadcast and the extent to which those programs were directed to community needs and interests; (b) the amount of locally-produced programming; and (c) the reputation of the station in the community. *E.g., Radio Station WABZ, Inc.*, 90 FCC2d 818, 840-842 (1982), *aff'd sub nom. Victor Broadcasting v. FCC*, 722 F.2d 756 (D.C. Cir. 1983). Other factors to be considered in connection with the ultimate assessment of a renewal expectancy include any violations by the incumbent of the Communications Act or the Commission's Rules and the extent to which the incumbent made investments to insure quality service. *E.g., Central Florida; Metroplex Communications, Inc.*, 4 FCC Rcd 8149, 8153 (Rev. Bd. 1989), *aff'd*, 5 FCC Rcd 5610 (1990).

(1) PROGRAMMING PERFORMANCE OF STATION WTVE(TV)

550. The evidence establishes that RBI provided virtually no locally-oriented, locally-produced non-entertainment programs at all during the license term. The composite

week analysis demonstrates that RBI broadcast fewer than five hours per week -- less than 3% of its weekly hours of operation -- of any kind of nonentertainment programs during each of the five composite weeks of the license term. *See, e.g.*, Paragraphs 65-67, above; Adams Exhs. 3-7. In three of the five composite weeks, the total of all nonentertainment programs did not exceed three hours. *Id.* Quantitatively, this alone warrants denial of any renewal expectancy. *See Video 44*, 5 FCC Rcd 6383 (1990).

551. In *Video 44*, the Commission determined that no renewal expectancy could be given to a licensee which broadcast no news or regular local programs and which limited its non-entertainment programming to only 4-5% of its programming week. The incumbent renewal applicant in *Video 44* typically broadcast one hour of nonentertainment programming daily even at the end of its license term. 5 FCC Rcd at 6383 (¶6). Here, as reflected in the composite week analysis, RBI did not even reach five hours per week of nonentertainment programming. *See*, Paragraphs 65-67, above; Adams Exhs. 3-7.

552. By contrast, the Commission did award a renewal expectancy to the incumbent in *Cowles*. But there the station's programming included: 11.36% news, 34% of which was local or regional; 4.47% public affairs; and 12.75% local programming. *Cowles*, 49 R.R.2d at 1152. Of the 16 hours and 37 minutes of locally-produced programming, 3 hours and 4 minutes was presented during prime time. *Id.* The station's programming also included news programs, elaborate weather reports, editorials, and multiple locally-produced daily and weekly interview programs of local or regional interest. *Id.* at 1151.

553. *Cowles* thus represents a point on the renewal expectancy scale at which an expectancy is to be awarded, and *Video 44* represents a point on that scale at which an

expectancy is to be denied. Quantitatively, RBI falls far short of the unacceptably low *Video 44* standard.

554. Qualitatively, RBI broadcast no locally-produced news of any sort at any time during the license term. *See, e.g.*, Paragraphs 120-132. It failed to provide even rudimentary emergency news coverage of matters having an immediate dire impact on residents of the service area, such as a powerful earthquake or a crippling blizzard which shut down the city of Reading for days. To the extent that RBI broadcast any programs regularly throughout the license term, those programs consisted of paid -- or, in the case of Dr. Gene Scott, unpaid -- religious programming which RBI did not routinely include as issue-responsive programming in its quarterly issues/programs lists. *See, e.g.*, Paragraphs 80-101, above.

555. While RBI compiled such quarterly lists throughout the license term, the programming reflected on those lists consisted almost exclusively of PSA's, not programs. The Commission has expressly held that PSA's "should not be a broadcaster's primary method for responding to community needs." *Airing of Public Service Announcements by Broadcast Licensees*, 81 FCC2d 346, 369, 48 R.R.2d 563, 581 (1980).

556. RBI's reliance on PSA's, rather than programs, was a conscious decision. *See* Paragraphs 112-119, above. Among the rationales offered by Mr. Parker in support of this decision was the following:

. . . It is more effective, in my opinion, to approach community issues on the PSA format than it is having a talking head half-hour with the Mayor because people would watch the PSA. They will turn the channel if you go a half hour format.

Tr. 848-849. This is nearly identical to a rationale offered by an incumbent renewal

applicant in another comparative renewal case:

Because of WYLR's format and listenership, most public service and community affairs issues were covered through short announcements and live broadcasts. This was deemed the most effective way to get the message to our listeners.

Normandy Broadcasting Corp., 8 FCC Rcd 1, 12 (ALJ Sippel 1992). In the *Normandy Broadcasting* decision, the Presiding Judge interpreted the passage quoted immediately above as follows:

In other words, a deliberate policy choice was made to not present a regular program on community needs such as regular scheduled interviews and discussions on local issues with local civic leaders, police and fire chiefs, etc.

Normandy Broadcasting, 8 FCC Rcd at 13. This led to the conclusion that the incumbent in that case had "never presented a *bona fide* nonentertainment programming format that could qualify for a substantial renewal preference." *Id.*

557. The same is true here. The record evidence conclusively establishes that RBI consciously chose not to provide any substantial, program-length programming directed to the needs and interests of its service area. At most RBI broadcast a mishmash of PSA's, some local, many non-local, some updated occasionally, some apparently updated not at all over a period of months. *See, e.g.*, Paragraphs 102-111, above. And while RBI indicated in its quarterly issues/programs lists that these PSA's were directed to local needs and interests, the testimony of the station's staff indicates that RBI broadcast its PSA's without regard to ascertained needs and interests. *See, e.g.*, Paragraph 104, above.

558. During the last year of the license term, RBI did broadcast some programs which, while not produced by the station, at least appear to have been "public affairs" programming. Those programs were produced by state politicians in Harrisburg and made

available to broadcasters and cable operators free of charge. *See* Paragraphs 88-95, above. But RBI did not choose to broadcast these programs in order to serve its audience or to meet community needs. Rather, it broadcast them in an effort to gain carriage on additional cable systems. *Id.* There is no evidence that the station even knew what issues, if any, were discussed in any of those programs prior to their broadcast.

559. There is further evidence that RBI's late-term broadcast of these Harrisburg-produced political programs was nothing more than window-dressing, and not intended as a serious effort to serve the public. Had RBI seriously wished to use those programs as a means of providing its audience with a regular source of information, RBI would have scheduled those programs at times certain so that viewers could know when they would air. But that is not what RBI did. To the contrary, it moved the various political programs around the schedule, seldom broadcasting any program in the same time slot twice in a row. *See* Paragraphs 91-95, above. It is hard to imagine a more effective way of guaranteeing that a program will have a minimum number of viewers.

560. Finally, the evidence establishes that RBI did not provide *any* locally-produced news or public affairs programs at all during the license term.

561. By any standard, RBI's programming was sadly deficient. The record evidence does not support the award of any renewal expectancy.

(2) THE REPUTATION OF THE STATION IN THE COMMUNITY.

562. While the supportive testimony of public witnesses may enhance an otherwise creditable programming record, such testimony cannot serve as a basis for a renewal expectancy in the absence of a programming record. *E.g., Metroplex Communications, Inc.,*

supra. Here, as discussed above, the record of RBI's programming during the license term establishes that no renewal expectancy is warranted. Thus, even if RBI's public witnesses had provided supporting testimony, that testimony would be to no avail.

563. In fact, the testimony of RBI's public witnesses supports the conclusion that RBI has **NOT** served the public in Reading. In comparative renewal cases, public witnesses usually offer evidence of the station's reputation in the community. *Metroplex Communications; Cowles*. Here, none of the public witnesses presented by RBI offered even the slightest indication of the station's reputation in the community. Why did RBI adduce no positive evidence about the station's reputation in the community? **NONE** of RBI's public witnesses was even a regular viewer of the station, and most specifically indicated that they were definitely **NOT** viewers. See Paragraphs 139-191, above. **NONE** of RBI's public witnesses indicated that RBI's programming service was in any way out of the ordinary or distinct from services provided by other local media. *Id.* To be sure, to the extent that RBI had provided PSA time and some production assistance to groups represented by some of the witnesses, those witnesses were understandably grateful. See, e.g., Paragraph 189, above. But expressions of gratitude fall short of evidence of community reputation or outstanding contributions to the community. ^{92/}

564. Given the opportunity to present public witnesses, RBI had a chance to showcase itself in the best possible light. The best it could serve up were a number of witnesses who indicated that the local cable channel was viewed as the primary source of

^{92/} It should also be noted that the gratitude expressed by several of RBI's public witnesses was addressed individually to Mr. Bendetti, who is no longer employed at the station. *E.g.*, RBI Exh. 41, pp. 8-10.

local news and public affairs in Reading. RBI's witnesses confirmed what Mr. Gilbert had learned about Station WTVE(TV) during his visits to Reading prior to filing Adams's application: during the license term few if any people in Reading were aware of Station WTVE(TV) or watched it at all, much less for news or important local information.

(3) VIOLATIONS OF THE ACT AND THE RULES

565. The Commission has held that [l]icensee misconduct may provide a more meaningful basis for preferring an untested challenger over a proven incumbent. Licensee misconduct pertinent to broadcast service may raise questions both as to the licensee's continued compliance with Commission rules and its dedication to serving the community.

Cowles, 49 R.R.2d at 1160. In this case RBI has conceded that it repeatedly violated the Commission's reporting requirements. *E.g.*, RBI Exh. 14. The record evidence establishes that RBI's reporting failures in fact extended beyond those failures it conceded. *See* Paragraphs 208-245, above.

566. More importantly, the record establishes that RBI was subject to an unauthorized transfer of control in October, 1991 which went unreported to the Commission for years. RBI stock was issued on October 15, 1991, which effectuated a transfer of control. And yet, RBI refused to disclose even the fact of the stock issuance, much less the transfer of control effected by the issuance, despite repeated opportunities to do so and a continual and consistent regulatory obligation to do so. As recently as July, 1999, RBI was *still* denying, to the Presiding Judge, that any stock issuance had occurred in October, 1991. *See* Paragraph 226, above.

567. Far from evincing the slightest remorse about RBI's past failures, Mr. Parker

demonstrated during his testimony that he defiantly refuses to recognize what the Commission requires of its licensees.

568. The overall record, and particularly Mr. Parker's adamant refusal to acknowledge his own obvious misconduct in connection with the events of October-November, 1991, strongly indicate that RBI will not comply with the Commission's rules in the future any more than it has complied with them in the past. This must weigh heavily against RBI in the final comparative balance.

(4) INVESTMENT TO INSURE QUALITY SERVICE

569. One core justification for awarding any renewal expectancy is the Commission's goal of encouraging licensees to invest in quality service to the public. *Cowles*, 49 R.R.2d at 1156, 1152. But the record here contains no indication that RBI made any such investments. To the contrary, the record indicates that RBI consciously did *NOT* make such investments. *See* Paragraphs 247-256, above. As a result, the station operated with "antiquated" equipment which broke down repeatedly. *See, e.g.*, Paragraph 251, above.

570. Even more damning, though, is the fact that Mr. Parker attempted to justify the station's limited public service programming on the basis of the station's financial situation, even though the station continued, notwithstanding that financial situation, to make very substantial payments to Mr. Parker for his "consulting" services. *See* Paragraphs 247-256, above. RBI's conduct in this regard is particularly striking in view of the fact that, when RBI finally did get around to broadcasting some arguably public affairs programming late in the license term, the programming it utilized was obtained free of charge from state

politicians in Harrisburg. *See* Paragraphs 88-95, above. In other words, had RBI truly been intent upon serving the public with those public affairs shows, it could have done so as early as the beginning of the license term, irrespective of its financial situation. The fact that RBI did not do so highlights RBI's consistent refusal to understand and comply with its obligation to serve the public.

571. Another striking aspect of RBI's effort to plead poverty in defense of its lame program showing is the fact that, again notwithstanding its financial situation, RBI chose to broadcast the Dr. Scott programs although such broadcasts did not generate any revenues to the station and were, in the view of the station's programming staff, not serving the public.

(5) COMPLAINTS

572. Further undermining any claim RBI may make for renewal expectancy is its total disregard for viewer complaints. The record establishes that "a lot" of viewers complained about the Dr. Scott program -- but the station kept broadcasting it at Mr. Parker's instruction. *See, e.g.*, Paragraph 45, above. The station received complaints about its lack of news coverage of Reading -- but the station ignored those complaints. *See, e.g.*, Paragraphs 136-137, above. The station even received complaints from people whose PSA's the station was broadcasting, complaints based on the fact that those people had no way of knowing when the PSA's were actually going to be broadcast. It is a true measure of the low regard in which the station was held that some of those complainants elected simply to insist on a videotape of their PSA, rather than be forced to watch the station. *See, e.g.*, Footnote 32, above.

V. ULTIMATE CONCLUSIONS

573. Adams is basically qualified to be a Commission licensee. RBI is not.

574. Mr. Parker has engaged in misrepresentation and lack of candor before the Commission in multiple different contexts. Caught in his own untruths, Mr. Parker has been neither repentant nor remorseful. To the contrary, he has dug himself in deeper, asking the Presiding Judge to believe the unbelievable time and again.^{93/} The Commission and the public would be well-served by a clear determination that Mr. Parker and RBI are not qualified to remain licensees, a result which is mandated by the record evidence.

575. Even if RBI were to be deemed qualified, it cannot prevail under the standard comparative renewal issue herein.

576. Adams is entitled to a clear comparative preference under the diversification component of the comparative analysis. *E.g.*, *Cowles*, 49 R.R.2d at 1153.

577. RBI, by contrast, has *NO* valid claim to *ANY* comparative preference. RBI is not entitled to any renewal expectancy. Its paltry programming performance during the license term is entitled to no credit at all. The station broadcast no locally-produced, locally-oriented news or public affairs programs at all throughout the license term. It consciously avoided such programs, opting instead to provide nothing but PSA's until late in the license

^{93/} Two particularly obvious examples: (a) Mr. Parker expects the Court and the Commission to believe that, in the *San Bernardino Proceeding*, he really thinks that it is Ms. Van Osdel's conduct, and not his, which troubles the Commission, *see, e.g.*, Paragraph 343, above; (b) Mr. Parker continues to claim that the Dallas Amendment was accurate, even though it is beyond argument that, in the *San Bernardino Proceeding*, a basic disqualifying issue was not only sought, but was added, and was resolved adversely to Mr. Parker, *see* Paragraphs 347-358, above. The record is replete with other examples of Mr. Parker's on-going effort to deny reality.

term, when the station's interest in securing greater cable carriage inspired it to find some free programming to broadcast on no apparent schedule in the hope of impressing cable operators. Program service to the public in Reading and the rest of the station's service area? None is apparent in the record. What, after all, justifies renewal of the only television station in Reading when that station was not willing or able to alert its audience that a powerful earthquake had struck the community?

578. The lack of locally-oriented programming is especially noteworthy in view of the fact that RBI has suggested that it is entitled to some comparative preference because of the local residence and/or civic activities of some of its shareholders. How can RBI suggest entitlement to such a preference when the record establishes that, notwithstanding any such local residence or civic activities, RBI has ignored its community of license?


579. Moreover, RBI's reporting violations and unauthorized transfer of control weigh heavily against renewal, particularly when a fully qualified applicant is standing by, ready to comply with the rules and provide valuable local service where the incumbent has not. The appropriateness of replacing RBI is further supported by the fact that RBI has not, during the license term, demonstrated any willingness to invest in service to the public. And finally, RBI's lack of response to viewer complaints adds yet another compelling reason to withhold any conceivable comparative preference from RBI.


580. Adams is qualified, RBI is not. Adams is entitled to a clear diversification preference, RBI is entitled to no preferences at all. To the contrary, RBI's programming performance has been shown to be barren. RBI has been shown to be blithely unconcerned about its obligations to the Commission and the public. RBI has been shown to be an unseen

and unfelt presence in the community where it operates the only television station.

581. In light of all of the foregoing, the application of Reading Broadcasting, Inc. for renewal of license of Station WTVE(TV) must be denied, and the application of Adams Communications Corporation must be granted.

Respectfully submitted,


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October 2, 2000

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of October, 2000, I caused copies of the foregoing "Proposed Findings of Fact and Conclusions of Law of Adams Communications Corporation" to be hand delivered (as indicated below), addressed to the following:

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